

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

BONDARY MCCALL

§

VS.

§

CIVIL ACTION NO. 1:11cv354

JOHN FOX

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Bondary McCall, an inmate formerly confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus challenging prison disciplinary cases.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed for want of prosecution.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes petitioner's objections should be overruled. Petitioner was ordered to provide specific information relating to each disciplinary conviction which forms the basis of this complaint. Petitioner failed to comply with the order of the court; thus, he

prevented the respondent from responding to his petition. Therefore, petitioner has failed to diligently prosecute his petition.

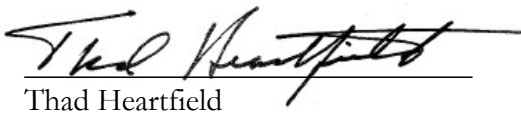
Additionally, petitioner stated in his petition that his internal grievances were denied as untimely. *See* Petition at 5. Thus, petitioner did not properly exhaust administrative remedies with respect to the disciplinary cases contested in this petition. Accordingly, the petition should be dismissed for failing to exhaust administrative remedies.

Further, to the extent petitioner may attempt to challenge his original conviction, petitioner's petition does not meet the criteria required to support a claim under the savings clause of 28 U.S.C. § 2255. *See Padilla v. United States*, 416 F.3d 424 (5th Cir. 2005); *Reyes-Requena v. United States*, 243 F.3d. 893 (5th Cir. 2001). As there are no time limitation provisions applicable to § 2241 petitions, the dismissal of this petition is without prejudice to petitioner's ability to assert his claims in another petition.

#### ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

**SIGNED** this the 16 day of **August, 2012**.

  
Thad Heartfield  
United States District Judge